IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 46 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 46 of 2003

MR MM TIRMIZI for Petitioner No. 1

MS NANDINI JOSHI,AGP for Respondent No. 1-3

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CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 23/05/2003

ORAL JUDGEMENT

1. The petitioner, in this petition, has challenged the order of detention dated 27.11.2002 passed by the Commissioner of Police, Ahmedabad City, the respondent

no.2 herein. The petitioner is detained under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (in short 'the Act'). In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on four prohibition cases registered against the petitioner and the statements of two annonymous witnesses recorded on 25.11.2002. Considering the above material, the detaining authority has recorded a finding that the detenu being a bootlegger within the definition of section 2(b) of the Act, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, the detention of the petitioner is necessary and, therefore, while exercising powers under section 3(2) of the Act, the order of detention has been passed.

2. The learned Counsel for the petitioner has raised many contentions while challenging the order of detention. However, it is not necessary for me to deal with each and every contention in view of the fact that the petition is required to be allowed on the first ground advanced by the learned Counsel. In the submission of learned Counsel, the detaining authority has taken into consideration the statements of two annonymous witnesses recorded on 21.11.2002 and they were verified on 26.11.2002 by the detaining authority. The order of detention came to be passed on 27.11.2002 i.e. on the next day. Therefore, in the submission of learned Counsel, the subjective satisfaction of the detaining authority is vitiated.

3. The Commissioner of Police has filed affidavit-in- reply. In para 15 of the said reply, it is stated that the statements of two annonymous witnesses were recorded on 25.11.2002 and they came to be verified on 26.11.2002 and the petitioner has been ordered to be detained by order dated 27.11.2002 and, therefore, it is not correct to say that without verifying the contents of the statements of the witnesses or the genuineness and the correctness of the statements, the order of detention is passed. It is the contention of the learned Counsel for the petitioner that the detaining authority has wrongly claimed privilege under section 9(2) of the Act which has affected the right of the petitioner to make effective representation under Article 22(5) of the Constitution of India.

4. I find substance in this submission. In the case of Kalidas Chandubhai Kahar Vs. State of Gujarat, 1993(2) GLR 1659, this Court, in an identical situation, observed that:

"If the statements of the witnesses are to be relied on, they must be genuine statements of the real persons. The detenu would like to verify as to whether these persons are fictious persons or not and/or whether their statements are bogus statements or not ? Unless the detenu knows the names and addresses of the persons who have given the statements,he cannot verify the aforesaid facts and if the names and addresses along with the contents of the statements are supplied to the detenu, he can have full opportunity to verify the position and make an effective representatioin on that basis. As against this, there is a provision under Sec. 9(2) carved out on the basis of Art. 22(5) of the Constitution which provides that nothing in sub-section (1) shall require the authority making such order to disclose facts which it considers to be against the public interest to disclose. Therefore, it is the duty of the detaining authority to strike a balance as stated above, that in the public interest, the names and addresses of the witnesses could not be disclosed.This should not be treated as an idle formality as it affects the public interest on one hand and theright of the detenu on the other. When that is so, the detaining authority is expected to do some exercise before actually exercising the privilege under section 9(2) of the Act."

5. Applying the said principles in the instant case, I am of the opinion that the verified statements were also placed before the detaining authority and there was no sufficient time for the detaining authority to examine the possibility of exercising powers under section 9(2) of the Act. In the instant case, the proposal could not have been made before 26.11.2002. The detention order is passed on 27.11.2002. From the affidavit in reply, it is clear that there is no material to show as to how he examined the necessity of exercising powers under section 9(2) of the Act which has affected the right of the detenu to make effective representation under Article 22(5) of the Constitution of India and, therefore, the continued detention of the detenu is vitiated and the impugned order of detention is required to be quashed and set aside.

6. In the result, the petition is allowed. The impugned order of detention dated 27.11.2002 passed against the detenu is hereby quashed and set aside. The

detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is accordingly made absolute. Direct Service.

(Kshitij R.Vyas,J.)

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